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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,003	07/10/2003	Jerald C. Seelig	619.625	4382

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IAN F. BURNS & ASSOCIATES  
1575 DELUCCHI LANE, SUITE 222  
RENO, NV 89502

EXAMINER

HOTALING, JOHN M

ART UNIT PAPER NUMBER

3713

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/618,003

Applicant(s)

SEELIG ET AL

Examiner

John M Hotaling II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/9/04, 3/9/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 44 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 45. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11 and 12 recites the limitation "the second protocol". There is insufficient antecedent basis for this limitation in the claim.

Claim 25 recites the limitation "the game element" in line 3. There is insufficient antecedent basis for this limitation in the claim. It seems that the limitation should be the movable game element.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poole US Patent 6,375,570 in view of Weiss US Patent 5,833,538. Poole discloses all of the instant application with respect to moving game reels, mechanical or simulated in response to a triggering event or a player input. Column 1:55-65 discloses that the term display means to show or perform or otherwise represent a person place or thing visually or audibly. Column 2 discloses that the computer of the gaming device uses the reels to perform certain exhibitions which are preferably related to the theme of the triggering combination. The term, exhibition as used in this specification means: (a) reels which are animated; and/or (b) an audio, visual or audiovisual representation of a person, place or thing in motion or at rest, including video images, graphics, activities, animations, virtual representations, simulations or movement. Animated reels are reels which have movement or simulated movement or reels which vibrate or shake, rotate, flip over, move upwards, downwards, or from side to side, bend, transform into a different shape or size, separate into different parts, expand or contract, change colors,

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shades or patterns, illuminate, make sounds or otherwise have dynamic characteristics (speed or direction). The computer can provide the exhibitions in one screen shot or in a succession of screen shots. IT should be appreciated that the foregoing examples are merely illustration and that the computer can use the reels to perform any exhibition of any kind for any purpose. It should also be appreciated that the gaming device can be adapted to use the reels to perform exhibitions before during or after a triggering combination occurs or when the game begins or terminates. Column 3:15-22 discloses that the reels return to their original state displaying the triggering combination and then can be moved to simulate a particular outcome. Column 2:60-65 discloses that the gaming device also includes a plurality of windows for providing information to the player and for entertaining the player. Also, the gaming device preferably includes a plurality of buttons for operating the game. 4:41-46 disclose that the gaming device can incorporate any game such as slot, poker or keno in addition to any triggering combination. The indicia used on and in the gaming device may be in mechanical, electrical or video form. Column 5 discloses that there may be one or more processors in control of the game. Column 6 discloses that the gaming device can provide an exhibition before during or after the gaming device provides the player with an outcome, such as when the game begins or when the game terminates. Poole lacks in disclosing determining a number of consecutive losing events with respect to a determined threshold. In an analogous game machine to Weiss therein is disclosed to employ a random or pseudo-random "trigger" event to alter a player's expectation based upon the occurrence of a random or pseudo-random event for a specified "duration". The trigger

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event may be a random or pseudo-random event which happened on a specific gaming device, on another gaming device or that was determined by a host computer system and then communicated back to the specific gaming device. Also, in addition to random events particular to the game, the random event or events may be particular to a current player. The current player either identifies himself via an insertion of a player card into a reader or some other electronic method, or a computer determines a new player by monitoring an elapsed period of time between games played and comparing playing speeds, handle pulls per unit time, between the current player and a previous player. The trigger may be a predetermined random event or combination of predetermined random events such as a predetermined outcome or a finite series of consecutive outcomes with a total score of zero. Column 6 disclose that mechanical or video reels may be used. Column 7 disclose that the apparatus 10 will allow the gaming device 20 to operate in a normal default mode until a predetermined random or pseudo-random "trigger" event occurs. The trigger event may be a random or pseudo-random event which happened on one specific gaming device 20, on another gaming device 20, on a host computer 70 or that was determined by a processing means 50 and then communicated back to the specific slot machine via communication lines 52. Also, in addition to random or pseudo-random events particular to the game, the random event or events may be particular to a current player. For example, the current player may be identified via the use of the player card 48 scanned by the reader 28 or by some other electronic method. In addition, a new player may be automatically identified by using the processing means 50 for monitoring an elapsed period of time between games

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played and comparing playing speeds, handle pulls or button pushes per unit time, between the current player and a previous player. The trigger events may be the occurrence of a predetermined random or pseudo-random event. For example, the trigger may be a predetermined random event or a combination of predetermined random events such as a predetermined unique outcome, consecutive outcomes with a total score of zero or a certain number of consecutive winning or losing outcomes. The key is that they be predetermined random or pseudo-random events. A random number generator 53 may be employed to provide a random event. It would have been obvious at the time of the invention to combine the references in order to move a basic or bonus game in any of the disclosed manners based on a player input and to enable or disable the player input based on the state of the game and to provide a consolation award based on a predetermined number of losing or winning outcomes as disclosed in Poole Column 1 to increase player enjoyment and excitement to provide players with games which use reels to determine game outcomes and also to provide exhibitions in order to bring attention to events and to entertain players.

#### ***Citation of Pertinent Prior Art***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

UK patent applications '712, '030, '882, and '300 all disclose secondary bonus games with player actuated movable game elements.

Stupak '402 discloses a consolation prize with a predetermined number of unsuccessful outcomes

Niwa '140 discloses a gaming machine with bonus, light and sound generation

Baerlocher et al '118 discloses a improved bonus scheme

Walker '516 discloses a consolation prize game machine

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M Hotaling II whose telephone number is 703 305 0780. The examiner can normally be reached on Mon-Thurs 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 305-7497. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JOHN M. HOTALING, II**  
**PRIMARY EXAMINER**

September 27, 2004

